

46 Am. Jur. 2d Judges § 88

American Jurisprudence, Second Edition | February 2022 Update

Judges

Glenda K. Harnad, J.D.; and Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

2. Interests as Grounds for Disqualification

a. Interests as Grounds for Disqualification, in General

§ 88. Interests of judge as grounds for disqualification, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  42 to 44

A.L.R. Library

[Disqualification of judge under 28 U.S.C.A. s 455\(b\)\(4\), providing for disqualification where judge has financial or other interest in proceeding, 163 A.L.R. Fed. 575](#)

Forms

Forms relating to disqualification of judge for interest, generally, see Am. Jur. Pleading and Practice Forms, Judges [\[Westlaw®\(r\) Search Query\]](#)

It is the duty of the presiding judge under both the statutory and decisional law to excuse himself when the judge has an interest in the outcome of the case before him.¹ It is a well-established principle, applicable in criminal as well as in civil cases,² that no judge or member of a tribunal should sit in any case in which he or she is directly interested.³ The purpose of a provision

prohibiting a judge from presiding over the trial of any cause in which the judge may be interested is to guard against the prejudgment of the rights of litigants and to avoid situations in which the litigants might have cause to conclude that the court had reached a prejudged conclusion because of interest, partiality, or favor.⁴

Observation:

A mere finding that the judge is interested in the cause or its outcome is not sufficient to require the judge's recusal; rather, there must be a finding that the judge is interested to such an extent that he or she would be unable to conduct fair and impartial proceedings.⁵ If there is any doubt or question of the judge being interested in the case, however, the doubt or question should be resolved in favor of disqualification of the judge.⁶

© 2022 Thomson Reuters. 33-34B © 2022 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [State ex rel. Edmisten v. Tucker](#), 312 N.C. 326, 323 S.E.2d 294 (1984).
No person is entitled to judge cases in which he or she has an interest in the outcome. [People v. Gacho](#), 2016 IL App (1st) 133492, 403 Ill. Dec. 417, 53 N.E.3d 1054 (App. Ct. 1st Dist. 2016), appeal denied, 406 Ill. Dec. 326, 60 N.E.3d 877 (Ill. 2016).
- 2 [Tumey v. State of Ohio](#), 273 U.S. 510, 47 S. Ct. 437, 71 L. Ed. 749, 5 Ohio L. Abs. 159, 5 Ohio L. Abs. 185, 50 A.L.R. 1243 (1927); [State v. Hutton](#), 198 La. 174, 3 So. 2d 549 (1941).
- 3 [Matter of Estate of Painter](#), 671 P.2d 1331 (Colo. App. 1983); [Easter House v. Department of Children and Family Services](#), 204 Ill. App. 3d 312, 149 Ill. Dec. 570, 561 N.E.2d 1266 (1st Dist. 1990); [Freedom Communications, Inc. v. Coronado](#), 372 S.W.3d 621 (Tex. 2012).
- 4 [Bailey v. Blount County Bd. of Educ.](#), 303 S.W.3d 216, 254 Ed. Law Rep. 420 (Tenn. 2010).
- 5 [Winkle v. Relay Admin. Bd.](#), 91 So. 3d 300 (La. 2012).
As to the nature of the interest as requiring disqualification, see §§ 88 to 91.
- 6 [State v. Fennelly](#), 123 N.H. 378, 461 A.2d 1090 (1983); [Pahl v. Whitt](#), 304 S.W.2d 250 (Tex. Civ. App. El Paso 1957).

End of Document

© 2022 Thomson Reuters. No claim to original U.S. Government Works.